



0000033298

## BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

AUG 30 2001

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKETED BY

JK

IN THE MATTER OF THE APPLICATION OF  
STERLING TIME COMPANY FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES

DOCKET NO. T-03947A-00-0806

DECISION NO. 63990**ORDER**

Open Meeting  
August 28 and 29, 2001  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On October 12, 2000, Sterling Time Company ("Sterling" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services within the State of Arizona.

2. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") were public service corporations subject to the jurisdiction of the Commission.

3. Applicant is a Florida corporation, authorized to do business in Arizona since November of 1999.

4. Applicant is a switchless reseller, which purchases telecommunications services from a variety of carriers.

5. On June 5, 2001, Applicant filed Affidavits of Publication indicating compliance with the Commission's notice requirements.

1           6.       On April 25, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff  
2 Report recommending approval of the application with some conditions without a hearing.

3           7.       In its Staff Report, Staff stated that Sterling Time provided financial statements for the  
4 period ending September 30, 2000. These financial statements list assets of \$909,178, total equity of  
5 \$825,378, and a net loss of (\$354,099). Based on the foregoing, Staff believes that Applicant lacks  
6 adequate financial resources to be allowed to charge customers any prepayments, advances, and/or  
7 deposits without posting a surety bond to cover such prepayments, advances, and/or deposits.

8           8.       Staff believes that if the Applicant experiences financial difficulty, there should be  
9 minimal impact to its customers. Customers are able to choose another reseller or a facilities-based  
10 provider.

11          9.       The Staff Report also stated that Applicant has no market power and the  
12 reasonableness of its rates would be evaluated in a market with numerous competitors.

13          10.      Staff recommended approval of the application subject to the following conditions,  
14 that:

15           (a)      The Applicant should be ordered to comply with all Commission rules, orders,  
16 and other requirements relevant to the provision of intrastate telecommunications  
17 service;

18           (b)      The Applicant should be ordered to maintain its accounts and records as  
19 required by the Commission;

20           (c)      The Applicant should be ordered to file with the Commission all financial and  
21 other reports that the Commission may require, and in a form and at such times as the  
22 Commission may designate;

23           (d)      The Applicant should be ordered to maintain on file with the Commission all  
24 current tariffs and rates, and any service standards that the Commission may require;

25           (e)      The Applicant should be ordered to comply with the Commission's rules and  
26 modify its tariffs to conform to these rules if it is determined that there is a conflict  
27 between the Applicant's tariffs and the Commission's rules;

28           (f)      The Applicant should be ordered to cooperate with Commission investigations  
of customers complaints;

          (g)      The Applicant should be ordered to participate in and contribute to a universal  
service fund, as required by the Commission;

1 (h) The Applicant should be ordered to notify the Commission immediately upon  
2 changes to the Applicant's address or telephone number;

3 (i) The Applicant's intrastate interexchange service offerings should be classified  
4 as competitive;

5 (j) The Applicant's competitive services should be priced at the rates proposed by  
6 the Applicant in its most recently filed tariffs. Those rates should be approved on an  
7 interim basis. The maximum rates for these services should be the maximum rates  
8 proposed by the Applicant in its proposed tariffs. The minimum rates for the  
9 Applicant's competitive services should be the Applicant's total service long run  
10 incremental costs of providing those services; and

11 (k) In the event that the Applicant states only one rate in its proposed tariff for a  
12 competitive service, the rate stated should be the effective (actual) price to be charged  
13 for the service as well as the service's maximum rate.

14 11. Staff further recommended approval of Sterling Time Company's application subject  
15 to the following conditions:

16 (a) That the Applicant file conforming tariffs within 30 days of an Order in this  
17 matter, and in accordance with the Decision;

18 (b) That the Applicant file in this Docket, within 18 months of the date it first  
19 provides service following certification, sufficient information for Staff  
20 analysis and recommendation for a fair value finding, as well as for an analysis  
21 and recommendation for permanent tariff approval. This information must  
22 include, at a minimum, the following:

23 1. A dollar amount representing the total revenue for the first twelve months  
24 of telecommunications service provided to Arizona customers by United  
25 following certification, adjusted to reflect the maximum rates that the  
26 Applicant has requested in its tariff. This adjusted total revenue figure  
27 could be calculated as the number of units sold for all services offered  
28 times the maximum charge per unit;

2. The total actual operating expenses for the first twelve months of  
telecommunications service provided to Arizona customers by the  
Applicant following certification;

3. The value of all assets, listed by major category, including a description of  
the assets, used for the first twelve months of telecommunications services  
provided to Arizona customers by the Applicant following certification.  
Assets are not limited to plant and equipment. Items such as office  
equipment and office supplies should be included in this list;

(c) Applicant's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs shall result in the expiration of the Certificate of Convenience and Necessity and of the tariffs; and

(d) In order to protect the Applicant's customers,

1. Applicant should be ordered to procure a performance bond equal to \$10,000. The minimum bond amount of \$10,000 should be increased if at any time it would be insufficient to cover prepayments, advances, and/or deposits collected from the Applicant's customers;
2. Proof of the performance bond should be docketed within 90 days of the effective date of an order in this matter or 30 days prior to the provision of service, whichever comes first; and
3. After one year of operation under the CC&N granted by the Commission, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission for a Decision that the requested cancellation is in the public interest.

12. No exceptions were filed to the Staff Report, nor did any party request that a hearing be set.

13. On August 29, 2000, the Arizona Court issued its Opinion in US WEST Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the Arizona Constitution requires the Commission to determine fair value rate bases for all public service corporations in Arizona prior to setting their rates and charges."

14. On October 26, 2000, the Commission filed a Petition for Review to the Supreme Court.

15. On February 16, 2001, the Commission's Petition was granted.

#### **CONCLUSIONS OF LAW**

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

1           3.       Notice of the application was given in accordance with the law.

2           4.       Applicant's provision of resold interexchange telecommunications services is in the  
3 public interest.

4           5.       Applicant is a fit and proper entity to receive a Certificate for providing competitive  
5 resold interexchange telecommunications services in Arizona.

6           6.       Staff's recommendations in Findings of Fact No. 10 and 11 are reasonable and should  
7 be adopted.

8                               **ORDER**

9           IT IS THEREFORE ORDERED that the application of Sterling Time Company for a  
10 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange  
11 telecommunications services is hereby granted, as conditioned herein.

12          IT IS FURTHER ORDERED that Sterling Time Company shall comply with Staff's  
13 recommendations as set forth in Findings of Fact No. 10 and 11.

14          IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,  
15 Sterling Time Company shall notify the Compliance Section of the Arizona Corporation Commission  
16 of the date that it will begin or has begun providing service to Arizona customers.

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

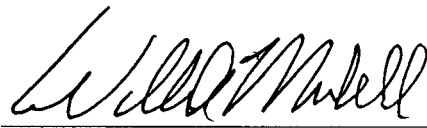
27 ...

28 ...

1 IT IS FURTHER ORDERED that if Sterling Time Company desires to discontinue service, it  
2 shall file an application to discontinue service with the Commission. At least sixty (60) days prior to  
3 filing an application to discontinue service, Sterling Time Company shall notify each of its customers  
4 and the Commission of its intent to discontinue service. Any failure to comply with this ordering  
5 paragraph may result in the forfeiture of Sterling Time Company's performance bond.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7  
8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9  
10 

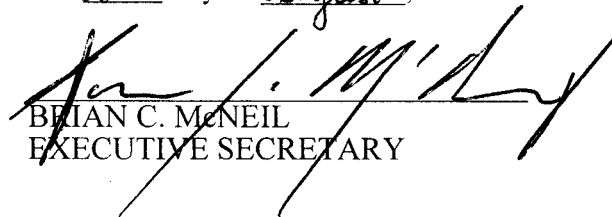
CHAIRMAN

11 

COMMISSIONER

COMMISSIONER

12  
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Secretary of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 30<sup>th</sup> day of August, 2001.

18   
19 BRIAN C. McNEIL  
20 EXECUTIVE SECRETARY

21  
22  
23  
24  
25  
26  
27  
28  
19 DISSENT \_\_\_\_\_

PD:mlj

1 SERVICE LIST FOR: STERLING TIME COMPANY

2 DOCKET NO.: T-03947A-00-0806

3 Lance J. M. Steinhart  
4 LANCE J. M. STEINHART. P.C.  
5 6455 East Johns Crossing  
6 Suite 285  
7 Duluth, Georgia 30097  
8 Attorney for Sterling Time Company

9 Christopher Kempley, Chief Counsel  
10 ARIZONA CORPORATION COMMISSION  
11 Legal Division  
12 1200 West Washington  
13 Phoenix, AZ 85007

14 Deborah Scott, Director  
15 Utilities Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007